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On the STATISTICS of CIVIL PROCEDURE in ENGLISH COURTS of LAW.
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[Read before the Statistical Society, 18th June, 1867.]

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I.—*Introduction.*

THE general interest taken in the subjects and proceedings of civil lawsuits is scarcely less than that in criminal cases.

This arises, no doubt, partly from the pleasure we all derive from the details of anything ingenious, adventurous, or uncommon, qualities not unfrequently displayed as well in the questions arising in civil lawsuits as in the mode of treating them.

The main source of this interest, however, arises from the fact that the proceedings in civil lawsuits afford the most apt and impressive, and in many cases the only means by which those not professionally concerned can acquire a practical knowledge of the law, and this interest is heightened by the feeling, unperceived perhaps but not the less influential, that what is our neighbour's case to-day may be our own to-morrow, and that in the chances of life we may become involved in circumstances, if not exactly similar, yet the right adjustment of which may depend on the principles established by the cases under our view.

Civil proceedings, however, whether we look to the subject or the numbers of them, possess but little of the interest which attaches to criminal proceedings as a branch of judicial statistics; and in this aspect may be deemed an unfruitful subject, and I cannot hope to bring before the Society any information of so interesting a kind as that on the statistics of criminal proceedings so ably propounded to us at our last meeting by the diligence and skill of Mr. Hammick.

But the statistics of civil procedure, though they do not bring

so prominently in view the moral condition of the community, or lead so naturally to the suggestion of remedial measures as do the statistics of crime, and so do not attain the degree of interest thus imparted to the latter, are of real value as illustrating to a sensible extent the general temper, the comparative prosperity or adversity, and the moral condition of the community.

The numbers of actions for debt, of cases in the Divorce and Matrimonial Court, of proceedings under the Act for winding-up insolvent joint stock companies, and of cases in the Bankruptcy Courts, are obvious illustrations of the extent to which the proceedings in civil cases may indicate the general temper, the comparative prosperity or adversity, and the moral tone of society.

Cases of the two latter kind, indeed, have of late had a melancholy prominence, corresponding with the financial difficulties which have weighed on the community.

It may, perhaps, be suggested that cases coming under the jurisdiction of the Divorce and Bankruptcy Courts (though our legislators retain them strictly in the category of civil proceedings) might be viewed as partaking, to some extent, of a criminal aspect; but it is not within the scope or object of this paper to enter upon questions of such a nature.

II.—*Object of Paper.*

The general interest felt in the subjects of civil lawsuits, is amply satisfied by the very accurate, as well as elaborate and well selected reports of the proceedings in cases of civil suits which form so prominent a portion of the intelligence of the daily press; and it is the object of the present paper, with the aid afforded by the elaborate returns periodically issued from the Home Office, and those recently printed by order of the House of Commons, to place before the Society some facts which it is hoped may be of interest and of value in relation to the subjects and numbers of the suits and proceedings before the civil tribunals of the country, to the results of these proceedings, and to the cost at which the administration of civil justice is maintained.

III.—*Synopsis of the Civil Tribunals of England.*

To those not practically occupied in the profession of the law, an enumeration of various civil tribunals of the country may not be unacceptable.

These consist of the courts of—

Queen's Bench,
Common Pleas, and
Exchequer,

each presided over by five judges.

The Court of Exchequer Chamber, under the presidency of all the judges.

The Court of Chancery, under the presidency of—
The Lord Chancellor,
The Lords Justices,
The Master of the Rolls, and
The three Vice-Chancellors.

The County Courts, fifty-nine in number, each under the presidency of its own judge.

The few remaining local courts for the recovery of small debts, each under the presidency of its own judge.

The Stannaries Court of Cornwall and Devon.

The Court of Probate, }
The Court for Divorce and Matrimonial Causes, } one judge.

The Admiralty Court, }
The Ecclesiastical Court, } practically the same.

The Court of Bankruptcy, under commissioners and registrars in the London Courts, and in cases of small amounts under the jurisdiction of the county court judges.

The Judicial Committee of the Privy Council, and
The House of Lords.

The Courts of Queen's Bench, Common Pleas, and Exchequer, the Court of Exchequer Chamber, and the Court of Chancery, constitute what are usually called the superior courts of law and equity.

By the subdivision of the business of the superior courts of common law among the several judges, distinct tribunals are in effect constituted: so that each of these courts may be practically estimated as comprising (including the work of chambers) five tribunals, or fifteen in all.

No business is originated in the Exchequer Chamber, which is a court of appeal from the decisions of the courts of common law, intermediate between them and the House of Lords. Nor is any business (except matters in lunacy) originated in the courts of the Lord Chancellor or the Lords Justices, which are courts of appeal from the Master of the Rolls and the Vice-Chancellors, intermediate between them and the House of Lords.

Thus we have the ordinary judicial business of the country, relative to cases of property of all kinds, except shipping (which in some cases are under the exclusive jurisdiction of the Admiralty

Court), conducted by what may be practically regarded as fifteen distinct tribunals in the superior courts of common law; and by four tribunals in the superior courts of equity; and by the fifty-nine tribunals of the county courts; by the few remaining local courts, and the Stannaries Court.

The business of the Court of Probate, of the Divorce and Matrimonial, Admiralty and Ecclesiastical Courts, and the Court of Bankruptcy, conducted each by its distinct tribunal.—The commissioners and registrars in bankruptcy being, in fact, in the first instance judges, though not so called.

The business in lunacy, conducted by the Masters in Lunacy, under the superintendence of the Lord Chancellor and the Lords Justices.

The intermediate courts of appeal are, in cases of common law, the three courts themselves sitting in banco, and the Court of Exchequer Chamber; and in Chancery, the courts of the Lord Chancellor, and the Lords Justices: the House of Lords being the tribunal of last resort from these courts, and from the Court of Probate, and the Divorce and Matrimonial Court; and the Judicial Committee of the Privy Council, being the tribunal of last resort from the Admiralty, and Exchequer courts; and from the colonies; and in cases of patents.

It would far exceed the limits of any paper which could be brought under the notice of the Society, to attempt a statement of the different jurisdictions of those various tribunals. It may be noticed, however, that the Court of Queen's Bench, which is the superior court of common law of the kingdom, had by its original constitution, and still retains, exclusive jurisdiction on all questions of the rights of the crown, except in revenue cases, the superintendence of civil corporations and magistrates, and the general supervision of all inferior jurisdictions; but was not a tribunal accessible to the community at large, on questions arising between subject and subject; on which, however, this court assumed and acquired a jurisdiction, by a legal fiction that the rights of the crown were in question. That the Court of Common Pleas had by its original constitution, exclusive jurisdiction in all actions between subject and subject; and especially in actions relating to land; and that the Court of Exchequer had, and still retains, exclusive jurisdiction on all questions relating to the revenues of the crown: but had, by a similar fiction to that adopted by the Court of Queen's Bench, assumed a jurisdiction on questions between subject and subject. The practice and jurisdiction of all these courts have now, for some time past, been assimilated by Act of Parliament, in all cases, except those before mentioned, as peculiarly within the jurisdiction of the Courts of Queen's Bench and Exchequer.

A general idea of the respective functions of the other courts may be gained from their titles.

IV.—*Proceedings of the Various Tribunals.*

The nature and number of the various cases brought before the several tribunals are shown by the returns, the earliest in relation to civil proceedings being for the year 1858.

We are indebted for these to the energy and good judgment of Mr. Samuel Redgrave, to whom we had been indebted for the returns relating to criminal procedure for some previous years.

A.—*Proceedings in the Superior Courts of Common Law.*

The purely crown business of the Court of Queen's Bench is not extensive, though the questions which do arise in relation to it are usually of considerable gravity and importance.

The nature and numbers of these cases are shown in the following table, and seem to invite no special remarks, except that they appear gradually to decrease in number :—*

	1865.	1864.	Average 1859-63.
On writs of mandamus made absolute	10	17	20
„ quo warranto information filed	10	1	5
„ writs of habeas corpus, application for writs	47	34	39
„ writs of certiorari	66	87	83
Judgments and executions	8	6	18
On grand jury bills	—	13	—
„ informations <i>ex officio</i>	—	—	2
„ orders of sessions removed into Queen's Bench	24	13	27
„ special cases from quarter sessions (12 and 13 Vict., cap. 45)	13	18	11
„ special cases on proceedings before justices (20 and 21 Vict., cap. 43)	34	48	47

All actions in each of the courts of common law are now originated by writ of summons, and the writs issued in the years 1865, 1864, and on the average for the period comprising the years 1859 to 1863 inclusive, were as follows :—

	1865.	1864.	Average for 1859-63.
	119,097	113,158	100,349

* Following the method adopted in the returns, the year 1865 being the last for which the returns are made up, is in this and all the subsequent tables placed first—columns being added for 1864 and for the averages for 1859-63.

Those proceedings resulted in the issue of writs of *capias*, for personal arrest before judgment, in the following number of cases :—

	1865.	1864.	Average for 1859-63.
	424	520	556

showing a very small and decreasing proportion, or about 0·35 per cent., in which this stringent measure was resorted to.

The appearances entered were in—

	1865.	1864.	Average for 1859-63.
	33,723	30,116	26,624

and as the appearances entered indicate the number of cases originally defended, it results that in 85,374 out of 119,097, or 71·4 per cent. of the cases in 1865, a settlement was brought about by the mere issue of the writ.

The returns show an equally interesting result in the number of cases entered for trial. Out of the 119,097 suits commenced in the year 1865, 4,649 only survived to be entered for trial, and of these 3,663 only were actually tried, as appears from the following table :—

Causes Entered for Trial and Tried.

	1865.		1864.		Average of Totals, 1859-63.	
	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.	West-minster.	Nisi Prius.
Remanets from previous year	238	—	—	—	—	—
Entered for trial	2,956	1,624	2,501	1,322	2,222	1,243
Trials	—	1,168	—	952	—	942
Defended.....	1,064	—	965	—	970	—
Undefended	283	—	254	—	192	—
Withdrawn, struck out, &c.	1,535	437	1,126	339	985	256
Adjourned, &c.	—	—	—	8	—	—

In addition to the above, there were 57 cases entered for trial on circuit in the Common Pleas of Lancaster, 4 in the Common Pleas of Durham, and 8 issues from the Court of Probate, all of which were tried, with the exception of 20 from the Common Pleas of Lancaster, and 1 from the Common Pleas of Durham, which were withdrawn or struck out.

The subjects of the suits entered for trial at Westminster, and on circuit, in the year 1865, were as follows:—

On promissory notes, bills of } exchange, &c.	298	Trespass relate to land, houses, &c.	169
On bonds.....	32	Questions on wills	2
For goods sold and delivered	369	For breach of promise of marriage.....	44
„ work and labour done	307	Seduction.....	14
„ money paid, advanced, or lent	128	Libel	69
„ money received	40	Slander	60
„ compensation for personal } injuries under Lord Campbell's Act.....	222	Malicious prosecution	16
For compensation from other } injuries from negligence.....	135	False imprisonment	58
Replevin or distress	19	Assault.....	70
Trover or detinue	144	Interpleader issues	55
For breach of contract	225	On the case.....	31
Upon special contracts	144	Nuisance	12
For breach of warranty.....	31	Breach of covenant	55
„ infringement of patents.....	8	For recovery of rent	22
„ for recovery of land (ejectments)	157	On life and fire policies.....	6
		Other suits	87
		Total	2,939

showing a large proportion, viz., those comprised in the first six items, being nearly 40 per cent. of the whole, to have originated in simple money demands.

The results of these trials, as shown in the succeeding table, cannot but be regarded as satisfactory.

	1865.	1864.	Average of 1859-63.
Verdict for plaintiff	1,742	1,565	1,462
„ „ subject to special case	49	38	86
„ by consent, with reference	162	175	137
„ for defendant	343	275	343
Jury discharged without verdict	43	35	31
Juror withdrawn	92	86	80
Nonsuit	136	80	98
Stet processus, venue changed, record withdrawn, &c.	451	335	207
Total	3,018	2,589	2,394

Showing that out of 3,018 cases brought to trial in 1865, 1,742, or 57·4 per cent., resulted in a verdict for the plaintiff; while 343 only, or rather more than 11 per cent., resulted in a verdict for the defendant.

The numbers of judgments obtained differ considerably from the number of causes defended, as shown by the appearances entered, and more widely from the number of causes tried.

This arises from judgments being, in the great majority of cases,

obtained on preliminary interlocutory proceedings, as is shown by the following table, and in many cases being confessed on warrants of attorney, or other process, without any action commenced.

Judgments.

	1865.	1864.	Average, 1859-63.
<i>On Judges' Orders—</i>			
For default of service	2,275	2,135	1,916
On affidavit „	28,043	26,755	25,579
<i>On Demurrers—</i>			
For plaintiff	38	27	29
„ defendant	13	10	22
<i>On Postea Writ of Trial and Writ of Inquiry—</i>			
For plaintiff	1,729	1,494	1,510
„ defendant or nonsuit	374	354	450
By default for plaintiff	4,539	4,028	3,659
On non prosecution for defendant	166	155	159
<i>On Special Cases—</i>			
For plaintiff	23	10	17
„ defendant	10	8	15
<i>On Judges' Orders to Stay Proceedings—</i>			
Warrants of attorney, certificates of arbiters, &c. }	1,230	1,588	2,279
Total judgments	38,440	36,564	34,625

showing that out of 38,440 judgments signed, 28,043, or nearly 73 per cent. of the whole, were obtained by the plaintiff on affidavit of service, without any further proceeding than the service of the writ; and that of the remainder, 1,729 were obtained by the plaintiff on trial, and 4,539 by the plaintiff on default.

Matters become far more serious when once judgment has been obtained; 27,468 executions having been issued against the property and persons of the defendants, exactly reversing the order at the commencement, and giving 71 per cent. of cases enforced by process against 29 per cent. settled without.

The forms in which these executions were carried into effect, so as to adapt them to the particular remedy sought, was as follows:—

	1865.	1864.	Average for 1859-63.
Writs of fieri facias	19,140	17,676	17,138
„ capias ad satisfaciendum	7,689	7,242	7,933
„ possession	425	415	179
„ elegit	175	170	115
„ exegi facias	36	57	51
„ capias utlagatum	3	14	10
Total executions	27,468	25,574	25,726

A large and important class of the business of the courts is transacted in chambers, and this is shown in the returns; but as this is incidental to, and arises out of, the actions brought, it is foreign to the object of this notice.

The Court of Exchequer Chamber, which is the Court of Appeal from the other courts sitting in banco, is composed of the judges of all the courts; the rule being that those only shall sit who are not attached to the court from which the judgment is appealed.

By the returns it appears that 76 cases of error and appeal were lodged in this court in the year 1865. That 65 cases, including some remnants from 1864, were set down for hearing, and 52 of them heard or disposed of; and that in no less than 36 cases out of these 52, or 71 per cent., the judgments of the courts below were affirmed.

	Total.
Writ of error allowed	—
Memorandum of error lodged	40
Notices of appeal lodged.....	36
	76
<i>Set Down for Argument—</i>	
Errors	24
Appeals	25
Remanets from 1864	16
	65
<i>How Disposed of—</i>	
Errors :	
Judgments affirmed	16
„ reversed	7
Stet processus entered	1
Venire de novo.....	—
Struck out.....	1
Standing for judgment	—
Appeals :	
Judgments affirmed	20
„ reversed.....	2
Venire de novo.....	—
Struck out.....	5
	52
Remanets and standing for judgment	13
	65

The appeals to this court being in many cases appeals of cases previously appealed to the respective courts sitting in banco, it seems well worthy of consideration whether, with the existence of the House of Lords as the ultimate court of appeal, it can be either necessary or expedient to maintain these two courts of appeal,

exercising to a great extent the same functions, and closely connected in practice and procedure.

B.—*In County Courts.*

Until a recent period (the year 1846), our ancient Saxon tribunals, the County Courts, had fallen into abeyance, and, with the exception of some courts of conscience and request, and other local courts, which had been established by Parliament for the recovery of small debts, and differed in their powers and were limited in the area of their jurisdiction, and of the powers vested in the justices of settling questions of wages, and disputes between master and servant, the remedies for the recovery of small debts were so expensive and dilatory as practically to amount in many cases to a denial of justice.

Under the provisions of an Act of Her present Majesty, passed in the year 1846, the county courts have been reconstituted on their present footing; and if any proof of the wisdom and necessity of this measure were required it would, I think, be found in the returns before us, the chief results of which are as follows:—

County Courts.

	1865.	1864.	Average, 1859-63.
Total plaints entered, including the cases } sent from the superior courts	782,849	738,481	809,501
<i>Causes Determined—</i>			
With a jury	823	838	910
Without a jury	433,160	401,334	428,279
	433,983	402,172	429,189
<i>Judgments—</i>			
For plaintiff	253,635	236,758	287,395
„ by consent or admission	163,161	147,855	167,993
„ by default.....	471	464	873
Nonsuit	8,364	8,440	9,324
For defendant	8,352	—	—
	433,983	402,172	474,762
<i>Judgment Summonses—</i>			
Issued.....	88,835	76,613	120,687
Heard	47,226	42,398	57,851
<i>Warrants of Commitment—</i>			
Issued	24,428	23,096	26,199
Debtors imprisoned	6,346	6,529	8,511
<i>Executions against Goods—</i>			
Issued	133,589	124,804	119,755
Sales made	3,739	3,610	4,317
Total amount for which plaints entered	£1,847,110	£1,760,384	£1,930,957

County Courts—Contd.

	1865.	1864.	Average, 1859-63.
<i>On Judgments Obtained by Plaintiffs on Original Hearings—</i>			
Amount of debts	£926,602	£980,755	£954,156
„ costs	£37,717	£38,383	£39,730
Total amount of fees on all proceedings.....	£257,875	£244,841	£250,708
<i>Number of Cases in which Judgments were Obtained—</i>			
40s. and under	300,158	278,034	297,481
5l. and above 40s.	88,309	80,649	85,319
10l. „ 5l.	30,257	28,840	30,875
20l. „ 10l.	11,760	11,233	12,897
50l. „ 20l.	3,486	3,405	3,867
By agreement above 50l.	13	11	—
	433,983	402,172	—

With reference to this table, the return contains, among others, the following introductory and explanatory remarks.

The number of plaints entered shows an increase of 44,368, or 6 per cent. upon the number in 1864, but is less than the number in 1863 by 16,405 or upwards of 2 per cent.

The proportion borne by the number of causes determined in court to the total number of plaints entered is 55·4 per cent., leaving 44·6 per cent. as the proportion of those settled out of court. Little variation appears in these proportions from year to year; in 1864 they were respectively 54·4 and 45·6 per cent., in 1863, 55·3 and 44·7 per cent.

Of the judgments given, 96·2 per cent., against 95·9 per cent. in 1864, were for the plaintiff; 1·9 per cent. against 2·1 per cent. in 1864 were nonsuits; 1·9 per cent. against 2·2 per cent. in 1864 were for the defendant. For 1863 these proportions were 95·9, 2·11, and 2·0 per cent. The number of debtors imprisoned gives 1 for 123 of the number of plaints entered; for 1864 the proportion is 1 to 113. For the average of five years, the proportion is 1 to 95.

The total amount for which plaints were entered shows an increase of 86,726*l.*, or 5 per cent. above the amount in 1864, and 8,361*l.* above the amount in 1863; but is less than the average for the five years 1859-63 by 83,847*l.*, or 4·3 per cent. The average amount for each plaint entered is 2*l.* 7*s.* 2*d.*

The amount of debts for which judgment was obtained is only half (50·2 per cent.) the total amount for which plaints were entered; in 1864 the proportion was 55·7 per cent.

The amount of costs shows a continued decrease; the amount of

fees was higher by 13,034*l.*, or 5·3 per cent., than the amount in 1864, but less by 5,525*l.*, or upwards of 2 per cent., than in 1863.

The costs and fees together give an average of 13*s.* 7*d.* for each cause determined, against 14*s.* 1*d.* in the preceding year. For each of the years 1865 and 1864, the cases in which judgment was obtained for 40*s.* and under were 69·1 per cent. of the total number of causes determined.

In the year 1865 three matters were heard, and three orders made, under the Charitable Trusts Act, the numbers having been two in the preceding year. Under the Act of the 21 and 22 Vict., cap. 85, protection orders to wives deserted by their husbands were registered in 470 cases, in seven cases the orders were discharged. In the preceding year 590 orders were registered. The number of orders in the five years 1859-63 gives an average of 599.

The equitable jurisdiction recently (by the Act of 28 and 29 Vict., cap. 99), conferred on these courts in cases in which the value of the subject-matter in dispute is under 500*l.*, did not come into operation until the 1st October, 1865, and is not noticed in these returns.

It appears, however, from a return printed by order of the House of Commons, that this most valuable jurisdiction was resorted to in 814 cases during the year 1866; and if this extended power is exercised with the skill and energy which have marked the common law proceedings of these courts, there can be no doubt that a large amount of the equity business of the country will be brought under the cognizance of the county courts.

The jurisdiction of the county courts in matters of bankruptcy have been largely called into operation—no less than 3,560 of the adjudications after mentioned having been made in these courts.

C.—*Local Courts of Ancient Jurisdiction.*

We learn from this return that no less than thirty-three local civil courts of ancient jurisdiction still exist. The business of these, however, except such as are situated in the thriving seats of commerce, appears almost extinct, the *Bradford Manor Court*, the *Bristol Tolgey Court*, the *Liverpool Court of Passage*, the *Newcastle Barge Court*, the *Salford Court of Record*, and the *Sheriff's Court of London*, being the principal which retain any important amount of business; in nine of these thirty-three local courts no proceedings took place, and in seven of the same courts there were no proceedings in 1865.

The *Lord Mayor's Court of London* is an exception to the general apathy into which local courts appear to have fallen. Owing to its peculiar power and jurisdiction in relation to citizens, the business of this court appears on the increase, the number of actions entered in

1865 being 5,006, an increase of 283, or about 6 per cent. upon the number in 1864, following a considerable increase in the preceding years. Moreover this court, by virtue of the process known as a Foreign Attachment, steps out of the boundaries of the city, and assumes a jurisdiction of an important nature over the rights of strangers as well as citizens.

By an ancient, and probably useful, custom of the city (in favour of trade), a creditor is entitled, before obtaining judgment, to attach the monies or goods of his debtor in the hands of a third party, who is called a Garnishee, by virtue of a summary proceeding in the Lord Mayor's Court, known as the proceeding by Foreign Attachment; and this proceeding has, of late, been rather extensively adopted, there having been no less than 945 cases of Foreign Attachment in the year 1865, an increase of 61, or nearly 7 per cent. on the number in the preceding year, and following an increase of 184, or 26·3 per cent., in 1864, upon the number for 1863; and the amount for which these Foreign Attachments was issued in the year 1865 having been 1,257,427*l.*, being an increase of 515,722*l.*, or 69·5 per cent. upon the amount in 1864.*

The *Stannaries Courts*, having jurisdiction in the counties of Devon and Cornwall, are local courts, with more enlarged area; and their proceedings, being chiefly in relation to mining cases, are, though in themselves important, of inferior general interest.

D.—*In the Court of Bankruptcy.*

The proceedings in the Court of Bankruptcy possess paramount general interest, as a direct index of the prosperous or adverse circumstances of the community; but they also possess a peculiar interest which attaches to a tribunal constituted, not for the determination of rights between litigating parties (though these are dealt with when they accidentally arise), but primarily and almost exclusively for the collection of the assets of bankrupts, and division of them among their creditors; and it is an interesting and important question, how far these objects are attained.

The number of adjudications for the year 1865 were—

On petition of a creditor.....	769
„ the debtor	5,937
By registrars at the prisons.....	1,091
On petitions in formâ pauperis	500
„ judgment debtor summons	8
	8,305

* By a recent decision of the House of Lords, it has been determined (in accordance with reason and justice) that the jurisdiction of this court is limited to cases in which the debt has been contracted within the city, and the fund in the hands of the Garnishee is within the city.

The total number shows an increase of 981, or 13·3 per cent., as compared with the total for 1864, but is less by 165 than the number in 1863: the increase in 1865 above the number in the preceding year extends to each form of procedure, except judgment debtor summonses. In the number of adjudications on petition of a creditor, it amounts to 174, or 29·2 per cent.; on petition of the debtor, to 677, or 12·8 per cent.; in the number by registrars at the prisons, to 187, or 20·6 per cent.; in the number on petitions in formâ pauperis, to 44, or 9·6 per cent. In 1864, there were nine adjudications on judgment debtor summonses. It extends also to each of the courts, amounting for the London Court to 742, or 32·1 per cent.; for the County District Courts, to 155, or 10 per cent.; and for the County Courts, to 184, or 5·4 per cent.

One cannot but be struck at the large proportion, 5,975, or nearly two-thirds of the whole of those adjudications being at the instance of the debtors themselves, a circumstance tending strongly to the conclusion, which appears to be borne out by the other returns in relation to the subject, that far too easy an opportunity of escape from obligations is afforded by fraudulent and collusive resort to the court of bankruptcy.

The number of adjudications in 1865 in which—

The debts of the bankrupt exceeded 300 <i>l.</i> , was	3,733
Where they did not exceed 300 <i>l.</i>	4,572

the former being 44·9 per cent., the latter 55·1 per cent. of the whole.

The total amount of the debts due from the estates of the bankrupts does not appear in the return. This would have been an item of interest for comparison with the following table of the total amount of the *gross* produce realized from the estates of bankrupts in the year 1865:—

	£
Amount realized by creditors' assignees	524,487
„ official „	332,468
Total	<u>856,955</u>

And with the number of cases in which a dividend was made, and in which there was no dividend, which are as follows:—

Number of cases in which a dividend was made.....	1,639
In which there was no dividend	5,727

The cases in which there was no dividend being 72 per cent., or nearly two-thirds of the whole. And with the following table, showing the rates in the pound at which dividends were made, and

of the proportion per cent. of the number at each rate to the whole :—

		Rate per Cent. to the whole.
Number of cases in which the dividend was under }	861	52'5
2s. 6d. in the pound		
2s. 6d. and under 5s.	381	23'3
5s. " 7s. 6d.	200	12'2
7s. 6d. " 10s.	85	5'2
10s. " 15s.	62	3'8
15s. " 20s.	15	0'9
20s.	35	2'1

showing that in 1,442 cases, or nearly nine-tenths of the whole, the dividends were under 7s. 6d. in the pound.

The number of discharges granted, suspended, or refused, are as under :—

Granted	6,076
Suspended	403
Refused	107

The totals are, respectively, to the number of adjudications made during the year, in the proportions of 73'2, 4'8, and 1'3 per cent., 20'7 per cent. of the number of adjudications remaining. In the preceding year the discharges granted, suspended, and refused, were respectively in the proportions of 73'8, 4'3, and 0'1 per cent. to the total number of adjudications; in 1862, 62'6, 5'41, and 1'6—a further instance of the facility of escape from liability afforded by the Court of Bankruptcy.

Is it surprising that dissatisfaction exists in the mercantile community at such results as these? It may well be expected that, under such circumstances, resort should be had, at the instance of creditors as well as debtors, to other modes of winding up insolvent estates; and accordingly we find that, in the year 1865, the total number of trust deeds registered under the provisions of the Bankruptcy Act, 1861, was 5,204, being an increase of 1,600, or 44 per cent., on the number of the preceding year. Of these, 2,733 were deeds of assignment, 2,344 deeds of composition, and 127 deeds of inspectorship. The gross value of the estates and effects affected by these deeds was 9,035,700*l.*, showing an increase of 5,233,700*l.*, or 137 per cent. on the preceding year.

E.—In the Court of Chancery.

The proceedings in the Court of Chancery for the years 1865-64 appear from these returns to have been as follows :—

	1865.	1864.	Average, 1859-63.
<i>Suits Instituted—</i>			
Bills or informations filed.....	2,503	2,280	2,198
Claims filed under general order of 1850	—	—	21
Special cases filed under Act 14 Vict., cap. 35	25	20	26
Administration summonses filed	462	397	416
Other originating summonses filed	326	269	307
	3,316	2,966	2,968

A considerable amount of the business of the Court of Chancery consists in the hearing of petitions, not only in matters incidental to causes, but in matters which the court is empowered to entertain as original matters without any suit previously instituted, either by special Parliamentary authority, as under the Railway Acts, Trustee Acts, Settled Estate Acts, &c., or under its inherent powers, as in cases of Lunacy, the conduct of its own officers, &c.

The following are the numbers of attendable petitions under the different descriptions of proceedings in 1865 and 1864, with the average of the five years:—

	1865.	1864.	Average, 1859-63.
In causes.....	886	898	1,068
Under Acts relating to railways and other } public works	832	930	481
„ Trustee Acts of 1850 and 1852	267	296	312
„ „ Relief Acts of 1847 and 1849	341	334	327
„ the leases and sales of Settled Estates Act	102	77	76
„ the Acts relating to charities	16	6	44
„ the Winding-up and Joint Stock Com- } panies Act	137	75	30
„ the Infants' Settlement Act, 1855	16	33	16
In other general matters	343	327	259
	2,940	2,976	2,613

The proceedings arising out of the petitions under the Winding-up Acts during the year 1865 are sufficiently interesting to induce a detailed notice, they were as follows:—

	1865.
Contributories included in the list of contributories	1,486
„ excluded „	214
Debts claimed and adjudicated upon.....	3,462
Orders made	474
	£
The amount of calls made	2,394,614
Dividends ordered to be paid to creditors.....	912,227
Amount ordered to be refunded to contributories	30,646
Realised by sales	95,612
The receipts for the year were, on calls or by way of compromise	495,296
Assets realised	1,123,996
The disbursements, including salaries or allowances, clerks travelling expenses, &c., law expenses, auctioneer's and accountant's charges and sundries, were.....	79,288
Dividends paid to creditors	1,354,077
Amount refunded to contributories	70,355
Other payments	8,529
A balance remained available for future distribution, amounting to	263,142

and these will doubtless be far exceeded both in number and in the amount involved by the disastrous events of 1866-67.

In matters of lunacy, which come under the jurisdiction of the Lord Chancellor and the Lords Justices—not as judges of the Court of Chancery, but by direct authority from the Crown—the proceedings for the year 1865 were:—

	1865.	1864.	Average for 1860-63.
Petitions presented for hearing	138	166	161
Orders made for inquiries, in lieu of Commissioners of Lunacy	84	88	65
Other orders, including fiats confirming Master's report	322	347	286
Number of orders made in pursuance of the Lunacy Regulation Act, 1862, for the application of properties of small amount for the maintenance of lunatics	21	23	—
	£	£	£
Amount of cash directed to be paid into court	58,326	37,169	42,909
„ „ out	28,524	27,359	31,017
Amount of stock directed to be transferred into court	136,040	125,077	125,023
Amount of stock directed to be sold and transferred out	456,354	288,970	244,316
Amount of stock directed by orders in lunacy to be transferred otherwise than in court	182,559	102,965	55,908

And under commissions of lunacy the proceedings were as follows :—

	1865.	1864.	Average, 1859-63.
Orders of inquiry in commissions in lunacy, } executed by Masters in Lunacy	80	87	63
Reports made to the Lord Chancellor.....	185	246	166
Amount of receipts in the accounts and affidavits } of committees and receivers in lunacy passed } during the year	£ 482,956	£ 470,443	£ 364,535
Amount of disbursements and allowances } therein	402,513	385,612	314,137

The reports made to the Lord Chancellor by the Masters in Lunacy comprise, amongst other matters, reports as to the property, kindred, and maintenance of the lunatics and their families, and the appointment of committees of their persons and estates; reports approving new committees of person or estate; reports fixing anew, or in any way varying the maintenance or residence of the lunatics; reports as to granting leases, and providing for the repair of the lunatics' estates, and on miscellaneous matters.

The Accountant-General of the Court of Chancery is the custodian not only of the monies of the ordinary suitors in the court, but of lunatics; also of the large sums deposited in compliance with the Standing Orders of the Houses of Parliament on private bills, and by railway and other companies for the execution of public works, by way of security and otherwise; and some idea of the magnitude and importance of the transactions in his department may be formed from the fact that during the year ended the 1st October, 1865, the amounts of cash securities and other effects paid and transferred into court and out of court were :

	£
Cash and securities paid into court	18,559,386
„ out of court	17,864,414

The number of cheques signed was 45,544; the number of powers of attorney issued, 3,309; and the number of accounts, 26,721.

The balances of stocks, securities, and cash in the name of the Accountant-General, and of the amount of cash remaining invested on account of the suitors' fund, and of the stock thereon, on the 1st October, 1865, were :—

1865.

1. Number of accounts	26,721
2. Balance of stocks and securities on the } various accounts	£ 57,215,889
3. Balance of cash on the various accounts	3,603,195
4. „ cash in the Bank	1,038,451
5. Total amount of cash remaining invested on } account of suitors' fund	2,564,744
6. Total amount of stock purchased with } suitors' cash	2,909,789

F.—*County Palatine of Lancaster.*

The Chancery Court of the county palatine of Lancaster forms a considerable addition to the court itself, the proceedings in that court being—

	1865.	1864.	Average, 1859-63.
<i>The Number of Suits and Matters Originated—</i>			
By bill.....	79	108	78
„ claim	15	20	19
„ summons	25	25	23
„ special case, petition, &c.	35	48	40
	154	201	160

G.—*Court of Admiralty.*

The number of causes in the Court of Admiralty, and the nature of them, as shown in the returns, are as follows:—

Nature of the Suits.

	1865.			1864.		
	Causes Pending at commencement of Year.	Causes Instituted.	Amount at which Causes were Entered.	Causes Pending at commencement of Year.	Causes Instituted.	Amount at which Causes were Pending.
			£			£
Salvage	28	81	166,050	26	77	175,975
Damage by collision	79	210	430,050	64	219	340,030
Bottomry	11	24	67,300	10	24	26,150
Actions for necessities supplied to foreign ships.....	5	48	24,900	6	51	23,030
Towage	2	18	2,910	1	14	2,020
Wages	15	45	19,000	13	65	29,890
Pilotage	1	2	200	—	3	450
Possessions	1	5	64,100	1	1	—
Other causes	27	68	134,250	23	40	757,950
	169	561	908,760	144	494	1,355,495
	670			638		

In these the judgments given were:—

	1865.	1864.	Average, 1859-63.
<i>Final Judgments in Contested Causes—</i>			
For plaintiff	108	99	109
„ defendant	22	30	34
Decrees in causes by default	28	16	46
Incidental decrees in contested causes			
Decrees in “in pœnam” causes			
	158	145	189

From the return furnished from the office of the Marshal of the Court of Admiralty, it appears that the number of arrests made, viz., of ships, of ships and cargoes, of ships and freights; of ships, cargoes, and freights; of cargoes only; of ships, nets, stores, &c.; of ships' ammunition, equipments, &c.; of proceeds in registry was 296 in 1865, against 268 in 1864.

H.—*Divorce and Matrimonial Causes Court.*

The proceedings in this court, which was instituted in the year 1857, may probably be considered as having now arrived at something like their average numbers, and are shown by the return to be as follows:—

	1865.	1864.	Average, 1859-63.
<i>Petitions Filed—</i>			
In formâ pauperis	5	1	4
For nullity of marriage	5	15	5
„ dissolution of marriage	222	231	213
„ judicial separation	62	66	56
„ restitution of conjugal rights	11	17	11
„ jactitation of marriage	—	—	—
„ declaratory act	3	2	2
	308	332	291
Application for protection of property	18	8	17

Before the establishment of this court marriages were indissoluble except by Act of Parliament; and the proceedings since its creation, have not only falsified the sinister predictions of opponents, but have shown how much domestic unhappiness has been purged and immorality prevented by means of its simple and salutary proceedings.

I.—*Court of Probate.*

The Court of Probate, established in the same year, 1857, exercises an exclusive jurisdiction in all matters relating to the

grant or revocation of probate of wills and letters of administration—a jurisdiction formerly exercised by numerous ecclesiastical courts, having no uniform mode of procedure, and being entirely independent of each other, sometimes causing conflicts as to their jurisdiction, and often making it a question of some anxiety whether a will had been proved or administration granted in the proper court.

By the statute 20 and 21 Vict., cap. 77, one court of probate was established for England, with district registrars, combining all the advantages of centralization with so much diffusion as is required to meet the wants of the community.

The probates registered and administrations granted out of the principal registry were:—

	1865.	1864.	Average, 1858-63.
Total number of probates granted	9,396	9,445	8,291
Administrations	4,678	4,807	4,393

And the value of the property under which probates and administrations passed in the principal registry of the Court of Probate, in the year 1865, was sworn under 57,588,696*l*.

The number of the probates and administrations granted in the district registries was:—

	1865.	1864.	Average, 1858-63.
<i>Number Granted in Common Form—</i>			
Probates	15,109	14,882	13,576
Letters of administration	5,717	5,276	5,029
With will annexed.....	789	930	746
<i>Number Granted under Direction of Judge—</i>			
Probate	15	17	13
Letters of administration	5	6	5
With will annexed.....	3	2	2

No information is afforded by the return as to the value of the property under which probates and administrations in the district registries are sworn.

K.—*The Ecclesiastical Courts.*

Since the institution of the Courts of Probate and Divorce, the business of the Ecclesiastical Courts has much diminished, and the total number of suits in these courts in 1865 (exclusive of faculties) was twenty-three, of which thirteen were in the Arches Court of

Canterbury, three in the Arches Court of York, three in the Diocesan Court of Bath and Wells, two at Rochester, and two at Worcester.

The nature of the proceedings was as follows :—

In matters of church rates	13
Pew rights	2
Making alterations in a church or churchyard without a } faculty.....	1
Against granting a faculty.....	1
„ collation to a canonry	1
„ institution to benefice.....	1
Decreeing a monition.....	1
Deprivation of benefice	2
To answer articles, &c.	1

In addition to the foregoing, in 1865 there were 109 suits for faculties, viz. :—

For altering, &c., churches	93
„ pew seats	1
„ erecting a school in a churchyard	4
„ tablets	4
„ removal of bodies	2
„ other objects	5

L.—Judicial Committee of Privy Council.

The proceedings before the Judicial Committee of the Privy Council consist of appeals from the Admiralty and Ecclesiastical Courts, The Channel Islands, The Isle of Man, The Colonies, and India, and of cases relating to Patents.

The proceedings before this exalted tribunal were :—

	1865.	1864.	Average, 1859-63.
Number of appeals entered.....	89	75	63
Dismissed for non prosecution.....	9	8	10
Heard and determined	32	40	41
Judgments affirmed	16	31	23
„ varied	1	1	3
„ reversed	15	13	16
Appeals lodged since 1st January, 1860, which } remained for hearing.....	157	114	94

Five applications were lodged during the year for the extension or conferring of patents; one was withdrawn, one dismissed, one granted.

M.—House of Lords.

The House of Lords is the ultimate tribunal of appeal from the Courts of Common Law and Chancery, the Courts of Probate and Divorce, and the Scotch and Irish Courts; and the following table shows the number of appeals lodged from each of these courts:—

	1865.	1864.	Average. 1859-63.
<i>From the Court of Chancery—</i>			
England	20	11	19
Ireland	1	4	7
<i>From the Court of Exchequer—</i>			
England	1	3	—
Ireland	1	—	—
<i>From the Court of Exchequer Chamber—</i>			
England	12	11	8
Ireland	—	—	2
<i>From the Court of Session—</i>			
Scotland	25	33	27
<i>From the Court of Probate—</i>			
England	—	1	2
Ireland	—	—	—
<i>From the Court of Divorce—</i>			
England	2	1	2
Total.....	62	64	67

Thirty-seven judgments were delivered in 1865, including causes heard in the previous session, and standing over for judgment, against twenty-seven in the previous year; twenty-four of the causes in 1865 were simply affirmed, one was affirmed with variation, four were reversed, three in part reversed and in part affirmed, one in part reversed, with direction, and four reversed with direction, declaration, or remit.

V.—Expense of the Civil Tribunals.

The expenditure for the maintenance of these various tribunals, with their respective judges and officers, is stated in an elaborate return recently printed by order of the House of Commons; from which it appears that the national expenditure in respect of the various civil tribunals, the proceedings of which form the subject of the present paper, was in the year 1866 as follows:—

	£	s.	d.
For the Court of Chancery	178,857	4	6
„ Judicial Committee of Privy Council.....	1,870	—	—
„ superior courts of common law	201,083	18	5
„ County Courts	491,935	18	11
„ Court of Probate and Matrimonial Causes	90,420	7	11
„ „ Admiralty	15,162	9	8
„ „ Bankruptcy	120,286	12	2
„ Palatine Court of Lancaster	8,169	1	1
Total	1,107,785	12	8

This does not include any expenses of the criminal courts, nor the legal expenses of the public departments, which, as well as the expenses of the Scotch and Irish Courts, are given in the Parliamentary return, from which it appears that the total cost to the public of all the judicial and legal establishments of the United Kingdom was, in the year 1866 2,344,540*l.* 2*s.* 3*d.*

Of the amount of the costs incurred by the suitors in these various tribunals above mentioned, the returns give but little information, and do not enable us to form any estimate, no statement of the amounts of the taxed costs of proceedings in the superior courts of law being given.

The amount of the costs of procedure in the County Courts is stated at 37,717*l.*

The taxed costs in the Courts of Bankruptcy at 93,519*l.*

The taxed costs in the Court of Chancery at 710,657*l.*

The taxed costs in the Court of Admiralty at 16,764*l.* 10*s.*
Total 858,657*l.* 10*s.*

But these amounts cannot be considered as giving any proximate idea of the amount expended by the suitors in the civil tribunals of the country.

VI.—*Concluding Observations.*

These returns show that, with a population of 20,990,946 in 1865, 119,097 actions were commenced in the superior courts of common law, 782,849 plaints issued in the County Courts, and 3,316 suits instituted in the Court of Chancery—a rather heavy amount of litigation. One redeeming feature of this, however, where the results are stated, as in the superior courts of law and the county courts, is the large proportion of cases in which success was with the plaintiff, showing that proceedings were not needlessly or vexatiously instituted. The results of the proceedings in Chancery do not appear. In Bankruptcy, though the numbers of cases are, happily, few compared with the population, they increase in a greater ratio than the population, and the results as to dividends

are so unsatisfactory, that it is in all cases a question with the creditor whether it is expedient to wind up an estate in bankruptcy or not; and when the bankrupt is indifferent to the disgrace of bankruptcy, he frequently, as has been seen, takes the matter into his own hands, and relieves himself from liability by his own petition. It is to be hoped that the elaborate measure now pending in Parliament may produce some amendment in this branch of the law.*

One curious fact appearing from these returns is the greater proportional number of causes heard before the Judges of the Court of Chancery than before the Judges of the Courts of Common Law, the number of causes heard before the Master of the Rolls and the three Vice-Chancellors (the four judges in original cases) having been 1,659 in 1865, the number of causes heard before the fifteen judges of the common law courts during the same year having been 2,563.

The reason for this will, no doubt, be found in the different modes of procedure in these different courts, but the delays of Chancery certainly do not rest with the judges of that Court.

The return as to the County Courts may be regarded as in all respects satisfactory, except as to the fees. The plaintiffs appear, in the great majority of cases, to act as warnings, and where these fail, the large proportion of cases above noticed is determined in favour of the plaintiff. The fees certainly appear out of proportion to the results, and it is an interesting question, probably quite worth a trial, whether these might not be beneficially and wisely reduced by fixing them only so as to discourage vexatious litigation.

The proceedings in the Admiralty Court appear comparatively few, looking at the quantity of shipping frequenting our ports, the hazardous nature of the occupation, and the risks run to obtain cargoes, 44,510 vessels being reported as having entered, and 48,181 as having cleared outwards in 1865, while 501 causes only were instituted in the Admiralty Courts, and 206 seizures made by the Admiralty Marshal during the same period.

The proceedings in the Court of Divorce and Matrimonial Causes should occasion no uneasiness, when we see that there were 185,474 marriages in England in 1865, and 308 applications only of all kinds, including those for declarations as to legitimacy to the Court.

The returns do not enable a comparison with the number of suits

* Since this paper was read, the Government bill for consolidating and amending the law relating to bankruptcy has been withdrawn, without any regret on the part of the mercantile community. This is not the place for suggesting alterations or improvements, but it does not appear impossible, perhaps not very difficult, to frame a measure which would answer the end in view, and avoid the scandal of offering a premium to fraud, and the injustice of frittering away bankrupts' estates in expenses, and of wearing out creditors by delay.

for divorce a “*mensâ et thoro*” (analagous to the present suit for judicial separation) which were in former times instituted in the Ecclesiastical Courts, and which now appear to a great extent superseded by the more rational proceeding for a dissolution of the marriage; but it is impossible to look into these returns without a feeling of satisfaction that those most injurious and demoralizing acts and feelings which too often clouded and embittered married life, and were without remedy in times gone by, can now be redressed by the salutary action of this Court.

Our numerous courts procure a division of labour, no inconsiderable advantage where there is really enough to do as leading to excellence in each department.

The few appeals attest the industry and ability of the judges.

Litigation can never in itself be a subject of satisfaction, but the retrospect of the statistics of our civil procedure justifies us in saying that, though a law-loving and law-obeying, we are by no means an unfairly litigious people—and in feeling that the machinery of our civil procedure is, in the main, in a satisfactory state, though capable in some respects of improvement.
